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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

REPLY COMMENTS OF THE CONSUMER-BUSINESS COALITION FOR FAIR PAYPHONE 800 FEES

The Consumer-Business Coalition for Fair Payphone 800 Fees ("Consumer-Business Coalition),[1/] by its attorneys and pursuant to the Commission's June 19, 1998 Public Notice in the above-referenced proceeding,[2/] hereby submits its reply comments on the issues raised by the United States Court of Appeals for the D.C. Circuit's remand[3/] of the Commission's Second Report and Order[4/] on payphone reform.

1/ The Consumer-Business Coalition is an organization of business and consumer groups that are reliant on affordable 800 service being available from payphones and are adversely affected by the Commission's current pricing methodology. Its members include: the AAA, American Trucking Associations, Air Transport Association, American Airlines, American Moving and Storage Association, Citicorp., Consumer Federation of America, Ecolab, International Communications Association, Motel 6 Operating L.P., Nabisco, Inc., National Network to End Domestic Violence, Owner-Operator Independent Drivers Association, Small Business Legislative Council, Transportation Intermediaries Association, Truckload Carriers Conference, and Virtual Voice Corporation.

2/ "Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding," Public Notice, DA 98-1198 (rel. June 19, 1998) ("Public Notice").

3/ MCI Telecomm. Corp. v. Fed. Communications Comm'n, No. 97-1675, slip. op. (D.C. Cir. May 15, 1998).

4/ In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report and Order, CC Docket No. 96-128, 13 FCC Rcd 1778 (1997) ("Second Report and Order").

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As described below, none of the comments filed in this proceeding provides the Commission with sufficient justification for maintaining its current market-based approach to pricing subscriber 800 and access code payphone calls. Moreover, contrary to the suggestions of some parties,[5] calling party pays also is not an appropriate mechanism for ensuring that payphone providers receive fair compensation. Calling party pays undermines the objectives many companies and organizations have in establishing 800 numbers: allowing – indeed encouraging – callers to reach them without charge. It is also contrary to Congress's directives in the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). The Commission should therefore rely on information already contained in the record, or initiate a comprehensive cost study of its own, to implement an incremental cost-based rate for coinless calls. Based on the information presented thus far in this proceeding, such a rate would likely fall in the neighborhood of $0.06 per call.

DISCUSSION

Almost every party to this proceeding now agrees that the Commission can no longer maintain its current carrier-pays, market-based model for pricing subscriber 800 and access code payphone calls.[6] Moreover, at least one Commissioner has publicly stated that compensation for coinless calls cannot be resolved by the marketplace at this time, and that the Commission

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5/ See, e.g., Comments of AT&T Corp., CC Docket No. 96-128 (filed July 13, 1998) ("AT&T Comments") at 13; Comments of Excel Communications, Inc., CC Docket No. 96-128 (filed July 13, 1998) ("Excel Comments") at 4; Comments of AirTouch Paging, CC Docket No. 96-128 (filed July 13, 1998) ("AirTouch Comments) at 2.

6/ See, e.g., Comments of IXC Communications Services, Inc., CC Docket No. 96-128 (filed July 13, 1998) ("IXC Comments") at 1-2; Comments of LCI International Telecom Corp., CC Docket No. 96-128 (filed July 13, 1998) ("LCI Comments") at 3; Comments of the Competitive Telecommunications Association, CC Docket No. 96-128 (filed July 13, 1998) ("CompTel Comments") at 5.

will simply have to "pick a number" to establish a rate.[7/] The only parties still claiming that the Commission can resurrect its twice-rejected market-based approach to pricing coinless calls are those who stand to earn windfall profits from the system at the expense of others – namely, the payphone providers.[8/]

As the overwhelming majority of commenters point out, the D.C. Circuit has made it abundantly clear that the Commission must abandon its attempt to use the local coin rate as a "market surrogate" for pricing coinless calls.[9/] In support of the Court's position, numerous parties – including the New York Department of Public Service, which examined Bell Atlantic's payphone costs as recently as 1997 – have shown that the current local coin rate of $0.35 in no way reflects the actual cost of providing payphone service and should not be used as a benchmark for pricing coinless calls.[10/]

The majority of commenters have also shown that, even if the $0.35 rate did reflect costs in the local coin market, the markets for local and coinless calls differ dramatically, thereby preventing one from being used as a surrogate for the other. Specifically, in the local coin market, end users are aware of the cost of a payphone call and can determine for themselves whether they wish to pay that amount to place the call. In the market for subscriber 800 and

7/ See "Furchtgott-Roth: FCC Will Set Payphone Compensation Rate," TR Daily (July 19, 1998).

8/ See Comments of American Public Communications Council, CC Docket No. 96-128 (filed July 13, 1998) at 7; Comments of the RBOC/GTE/SNET Payphone Coalition, CC Docket No. 96-128 (filed July 13, 1998) at 3.

9/ See Comments of the Telecommunications Resellers Association, CC Docket No. 96-128 (filed July 13, 1998) at 1-3; Comments of Sprint Corporation, CC Docket No. 96-128 (filed July 13, 1998) ("Sprint Comments") at 3; Excel Comments at 4.

access code calls, however, end users do not exercise that same market discipline because it is the 800 subscriber or interexchange carrier – not the end user – that is paying for the call. As indicated by a number of commenters, this significant difference renders the Commission's link between the local coin rate and the coinless rate "fundamentally illogical."[11/]

Any insistence on the part of the Commission to tie the coinless rate to the local coin rate for the third time will likely lead to another reversal by the D.C. Circuit, and, more significantly, result in a stay of the current payphone compensation system.[12/] The possibility of a stay is critical because the absence of a compensation mechanism will instill uncertainty into carrier and customer business plans, prevent payphone providers from receiving fair compensation, and hamper the payphone deployment goals of Section 276 of the 1996 Act.[13/] For these reasons, the Commission should abandon its attempt to link the coinless rate to the local coin rate and instead adopt an incremental cost-based approach to pricing coinless calls.[14/]

10/ See Comments of the State of New York Department of Public Service, CC Docket No. 96-128 (filed July 13, 1998) at 1-2; see also AT&T Comments at 6; Comments of Frontier Corporation, CC Docket No. 96-128 (filed July 13, 1998) at 3-8.

11/ See Sprint Comments at 18.

12/ See id. at 5; Comments of the Consumer-Business Coalition for Fair Payphone-800 Fees, CC Docket No. 96-128 (filed July 13, 1998) at 7.

13/ See 47 U.S.C. § 276.

14/ If the Commission chooses to adopt a cost-based rate, it must base that rate on the costs of all payphone providers. Earlier in this proceeding, the Commission performed a cost-based analysis supposedly to confirm that its "market surrogate" for coinless calls was accurate. As has been pointed out numerous times by the Consumer-Business Coalition and others in this proceeding, however, the Commission's cost-based analysis relied solely on data provided by independent payphone providers, who incur higher costs than the local exchange carriers that own the majority of the nation's payphones. See, e.g., Comments of the Consumer-Business Coalition, CC Docket No. 96-128 (filed Jan. 7, 1998) at 5-6; AT&T Petition for Reconsideration, CC Docket No. 96-128 (filed Dec. 1, 1997) at 12-16. To arrive at a fair cost-based rate for pricing coinless calls, the Commission must consider the costs incurred by all payphone providers. Studies submitted by MCI and AT&T in this proceeding that take into account these

Recognizing that the current market-based approach is unworkable, a number of commenters suggest that the Commission should adopt a "calling party pays" model.[15] These carriers claim that, if the Commission insists on implementing a market-based rate, calling party pays is the only way to ensure that those causing costs are the ones paying for them.[16] In other words, the proponents of calling party pays claim that, under their system, the end users placing the 800 or dial-around calls will always exercise market discipline because they will be the ones paying to access the payphone.[17]

When the Commission first examined the possibility of calling party pays at the outset of the payphone proceeding in 1996, it rejected such an approach on the ground that it would be burdensome for transient payphone callers to have to deposit coins, in addition to providing call-billing information, when placing 800 and dial-around payphone calls.[18] The Commission also found that "TOCSIA expressly prohibits the Commission from adopting compensation rules for interstate access code calls that require 'advance payment by consumers.'"[19] These rationales are just as true today as they were two years ago. While some commenters argue that calling party pays would be not be unduly burdensome to transient callers because the majority of

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costs suggest that an appropriate per-call compensation rate may be as low as $0.06 per call. See In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541 (1996) ("First Report and Order") at ¶ 42.

15/ See, e.g., AT&T Comments at 13; AirTouch Comments at 2; Comments of the Personal Communications Industry Association, CC Docket No. 96-128 (filed July 13, 1998) at 7-13.

16/ Id.

17/ See, e.g., PCIA Comments at 9.

18/ First Report and Order at ¶ 85.

19/ Id.

payphone calls are local coin calls,[20] these commenters overlook the fact that a large number of businesses, public service organizations and consumers rely on 800 numbers to enable and encourage their customers, employees, families and friends to reach them free of charge. In addition, although some may claim that TOCSIA does not prohibit a calling party pays system, the Commission has already concluded that "such an approach would contradict the Congressional intent, and possibly the plain language, of Section 226(e)(2) of the Act."[21]

Calling party pays also is an inappropriate mechanism for compensating payphone providers because it would prevent end users from placing 800 calls without charge. Businesses generally establish 800 numbers for the express purpose of permitting the public or their employees to call them easily – and free of charge – from any location. If callers have to find and deposit coins into payphones, they will likely be deterred from placing such calls.

Trucking companies, for example, rely heavily upon the availability of payphones at rest areas and truck stops so that drivers can place calls to dispatchers to report accidents, coordinate scheduling and arrange deliveries. To encourage prompt and frequent communication on these critical issues, almost all trucking companies have set up 800 numbers for employee use. The adoption of a calling party pays system would require these companies to equip their drivers with buckets of change for each trip, making preparation unduly burdensome, and would impose new transaction costs on these companies for tracking money and providing their employees with reimbursements. Other members of the Consumer-Business Coalition, such as Nabisco, who use

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20/ See, e.g., Excel Comments at 7.

21/ First Report and Order at ¶ 85.

800 numbers to receive information from their sales force, would have to ensure that their employees have enough change to place 44,000 calls per day.[22/]

Though it might instill market discipline in some transient callers, adopting calling party pays would ultimately shift the burden of tracking coinless calls from interexchange carriers ("IXCs") onto businesses. In its First Report and Order, the Commission assigned the task of tracking coinless calls to IXCs because they are in the best position to do it.[23/] Shifting responsibility to businesses at this time would result in added transaction costs and, perhaps more importantly, would require them to reimburse employees at a market rate that may in the end be higher than the current \$0.284 charge. In addition, adopting calling party pays will do nothing to solve the problem of locational monopolies, which prevent any market rate, regardless of who pays, from being appropriate to begin with. Like the Commission's market surrogate approach, calling party pays will require the payor of a call to pay a fee to access the phone even though competitive alternatives at the point of sale are still not available. Under these circumstances, calling party pays will do nothing more than provide consumers with the same limited options that 800 service subscribers now have under the current carrier-pays mechanism.

Finally, the adoption of a calling party pays system should be discouraged because it will hinder public service organizations from making hotlines and other emergency 800 numbers available to those who need them most. For example, under calling party pays, a stranded motorist lacking change will be unable to place an 800 call to a roadside assistance service; a battered woman fleeing an abusive situation will be unable to use a payphone to call a toll-free

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[22/] See Petition for Reconsideration of the Consumer-Business Coalition for Fair Payphone-800 Fees, CC Docket No. 96-128 (filed Dec. 1, 1997) at Attachment 1, Declaration of Orest R. Fiume.

hotline for help unless she remembers to bring change with her; and a runaway child lacking food and money will be prevented from contacting a shelter or other social service through a payphone. Payphones are often the only means of communication available to such persons, and the public interest would not be served by making emergency service considerably more difficult to obtain.

The record is replete with information indicating that a carrier-pays, incremental cost-based approach would be the best way to ensure that payphone providers receive fair compensation for subscriber 800 and access code calls. In fact, contrary to the claims of some, MCI's most recent cost study suggests that the costs created by coinless calls can be quantified and used to set a rate that is both affordable to users and provides payphone owners with a reasonable return on investment.[24/] The Commission should either rely on information already contained in the record, or initiate a comprehensive cost study of its own, to arrive at an incremental, cost-based compensation rate for coinless calls. Only through this approach will a rate be set that is fair to payphone providers, interexchange carriers, 800 service subscribers and consumers.

23/ First Report and Order at ¶ 97.

24/ MCI Comments at 7.

CONCLUSION

For the foregoing reasons, the Commission should jettison its current market-based mechanism to pricing subscriber 800 and access code payphone calls, reject the calling party pays approach suggested by some parties, and implement the only workable method of compensating payphone providers for such calls – a carrier-pays, incremental cost-based method, which, based on information already contained in the record, should result in a per-call compensation rate of approximately $0.06 per call.

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CERTIFICATE OF SERVICE

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